

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the complaint of)	
JOHN MCCREADY against COMCAST PHONE OF)	Case No. U-17652
MICHIGAN, LLC.)	
_____)	

At the December 4, 2014 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER

On June 9, 2014, John McCready filed a complaint against Comcast Phone of Michigan, LLC (Comcast) alleging that Comcast changed his AT&T Michigan (AT&T) landline telephone service to Comcast Voice over Internet Protocol (VoIP) without his authorization, commonly known as “slamming.” Administrative Law Judge Dennis W. Mack (ALJ) was assigned to the case.

On July 31, 2014, Comcast filed its answer to Mr. McCready’s complaint and a motion to dismiss the case. In the motion to dismiss, Comcast argued that under the Michigan Telecommunications Act, MCL 484.2101 *et seq.* (MTA), the Commission lacks regulatory authority over VoIP, which is the type of service Mr. McCready alleges was slammed. The motion also proposed that, as an alternative to granting the motion to dismiss, the ALJ could grant summary disposition in Comcast’s favor.

On August 5, 2014, the ALJ sent an email to the parties indicating that responses to Comcast's motion could be filed via email. Mr. McCready filed his response via email on August 6, 2014, arguing that although VoIP does not fall within the Commission's jurisdiction, the act of slamming when performed by a telecommunications provider does fall within the Commission's jurisdiction.

An evidentiary hearing was held on August 7, 2014. Comcast, Mr. McCready, and the Commission Staff (Staff) appeared at the hearing. At the hearing, the ALJ heard arguments regarding Comcast's motion. At the conclusion of the hearing, the ALJ issued an oral Proposal for Decision (PFD). In the PFD, the ALJ stated that the Commission lacks jurisdiction over the subject matter and recommended that the Commission dismiss the complaint or in the alternative, grant summary disposition in favor of Comcast. The ALJ also provided the opportunity for parties to file exceptions to the PFD by September 5, 2014, and if necessary, replies to exceptions by September 12, 2014.

On September 5, 2014, the Staff filed exceptions. The Staff takes exception to the ALJ's recommendation to grant Comcast's motion to dismiss or, in the alternative, dismissal of the complaint without a full evidentiary hearing or sufficient time to properly respond to Comcast's motion to dismiss. The Staff argues that issues of fact exist in this case, making dismissal without a full evidentiary hearing inappropriate. The Staff asserts that neither the MTA nor federal law prevent the anti-slamming provisions of the MTA from being applied to VoIP and that the MTA does not exempt VoIP from the consumer protection provisions preventing providers from slamming customers. According to the Staff, the federal Telecommunications Act of 1996 gives the Commission jurisdiction over VoIP providers with respect to consumer protection provisions. The Staff points to prior Commission orders and the January 14, 2014 decision in *Verizon v FCC*,

740 F.3d 623 (CA DC, 2014) in support of its argument.¹ The Staff also argues that, when reading Sections 505 and 211a of the MTA together, the Commission has authority to impose service quality requirements and authority over other forms of consumer protection, such as the anti-slamming provisions in the MTA. Staff's exceptions, p. 7. The Staff asserts that the December 2005 amendment to the MTA, requiring providers of telecommunication service using a new or emerging technology to register with the Intrastate Telecommunications Services Providers, was put in place specifically to prevent slamming and cramming. The Staff adds that because Comcast is registered under this provision, Comcast is subject to the anti-slamming and anti-cramming provisions of the MTA. The Staff also argues that, contrary to the ALJ's recommendation to dismiss, there are issues of fact to be tried in this case. The Staff requests that the Commission find in Mr. McCready's favor and remand the case for a full evidentiary hearing.

Also on September 5, 2014, Mr. McCready emailed his exceptions to the PFD to the ALJ and the other parties.² Mr. McCready's exceptions are essentially the same as the Staff's exceptions. He argues that the Commission has jurisdiction to hear his complaint based on the MTA, and that prior Commission orders, Commission procedures, and Commission rules indicate the Commission has jurisdiction over this matter. Mr. McCready also argues that slamming by a telecommunication service provider such as Comcast falls under the prohibited acts of the MTA,

¹ The Commission agrees with Comcast that the reference to the *Verizon v FCC* case in the Staff's exceptions misidentified the United States Supreme Court as the forum for this decision.

² Contrary to usual procedure, on August 25, 2014, the ALJ granted Mr. McCready permission to file his exceptions and replies to exceptions via email addressed to the ALJ and indicated in an August 26, 2014 email that Mr. McCready could serve his exceptions and replies to exceptions on the other parties via email, as well, and did not have to file his exceptions and replies to exceptions with the Commission's Executive Secretary. All subsequent proceedings shall strictly adhere to the Commission's Rules of Practice and Procedure, R 460.17101 *et seq.*

despite the service in question being VoIP. Mr. McCready requests that the Commission order an evidentiary hearing and dismiss Comcast's motion to dismiss.

On September 19, 2014, Comcast filed replies to the Staff's and Mr. McCready's exceptions. Comcast reasserts that the Commission does not have jurisdiction over this complaint. Comcast also reasserts that the ALJ properly applied Section 505 of the MTA, prior Commission orders, prior court cases, Commission rules, and Commission procedures in his determination that the Commission does not have jurisdiction over VoIP service. Comcast argues that federal and state policy support a "hands-off approach" to VoIP. Comcast also argues that it is not acting as a telecommunications provider when it provides VoIP service and therefore is not subject to Commission jurisdiction. Further, Comcast points out that the Staff's reliance on *Verizon v FCC* is misplaced. Comcast argues that the Staff misconstrued the decision and that nothing in the decision addresses preemption of a state law curtailing state regulatory authority over VoIP services. Further, Comcast states that Section 706 of the federal Telecommunications Act does not preempt state regulatory authority over VoIP nor does it mandate that a state agency enforce federal anti-slamming provisions. Comcast further argues that the Federal Communications Commission has concluded, when applying federal law, that VoIP providers are not subject to the federal verification procedures regarding changing telecommunication providers.

On September 19, 2014, Mr. McCready filed a document entitled "Reply to Exceptions" via email (September 19 document). Mr. McCready's document essentially outlines his agreement with the Staff's exceptions. A document outlining agreement with another party's exceptions does not meet the threshold required in Rule 341(3) of the Rules of Practice and Procedure before the Commission, 1999 AC, R 460.17341(3), to be considered replies to exceptions. Therefore, Mr. McCready's document will not be considered in making any finding in this order.

On September 30, 2014, Comcast filed a motion to strike Mr. McCready's replies to exceptions. Comcast argues that Mr. McCready was attempting to file additional exceptions instead of replying to exceptions and that in filing the new exceptions as replies, Comcast was denied the opportunity to respond to the new exceptions. The Commission has already determined in the preceding paragraph that it will not consider Mr. McCready's September 19 document in its findings in this order. This determination renders Comcast's motion moot.

Discussion

Mr. McCready alleges Comcast violated Section 505(1) of the MTA when it switched his AT&T landline service to Comcast VoIP service without his authorization. MCL 484.2505(1). That section reads, "An end user of a telecommunications provider shall not be switched to another provider without the authorization of the end user." MCL 484.2505(1). Section 102(ee) of the MTA defines "Telecommunication provider" or "provider" as "a person that for compensation provides 1 or more telecommunication services." MCL 484.2102(ee). Both AT&T and Comcast are licensed by the Commission to provide basic local exchange service and as such are considered telecommunication providers. Section 102(ff) defines "Telecommunication services" or "services" as "including regulated and unregulated services offered to customers for the transmission of 2-way interactive communication and associated usage." MCL 484.2102(ff).

The Commission finds that it has jurisdiction over landline to VoIP slamming complaints based on Sections 102 and 505 of the MTA. MCL 484.2102 and MCL 484.2505. The Commission also finds that this case should be remanded for a full evidentiary hearing.

THEREFORE, IT IS ORDERED that the complaint of John McCready against Comcast of Michigan, LLC, alleging slamming of Mr. McCready's landline service to Voice over Internet

Protocol service is remanded to the Administrative Law Judge assigned to the case for a full evidentiary hearing.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order under MCL 484.2203(12).

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Greg R. White, Commissioner

Sally A. Talberg, Commissioner

By its action of December 4, 2014.

Mary Jo Kunkle, Executive Secretary

In the matter of the complaint of)
JOHN MCCREADY against **COMCAST PHONE OF**)
MICHIGAN, LLC.)
_____)

Case No. U-17652

Suggested Minute:

Case No. U-17652 involves a complaint filed by John McCready against Comcast Phone of Michigan, LLC. The order before you remands the case to the Administrative Law Judge for a full evidentiary hearing.